

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DARREN GILBERT,

Plaintiff,

v.

PARAMJIT SINGH, individually and
doing business as Super Mac Food & Gas
#2 and ROBBY SINGH, individually and
doing business as Super Mac Food & Gas
#2,

Defendants.

Case No. 1:21-cv-01338-AWI-HBK

ORDER TO SHOW CAUSE

Plaintiff, Darren Gilbert, commenced this action by filing a complaint against Defendants Paramjit Singh and Robby Singh, individually and doing business as Super Mac Food & Gas #2 (collectively referred to as “Defendants”) alleging violations of Title III of the American Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12101 *et seq*; the California Unruh Act, California Civil Code § 51 *et seq.*; and California Health and Safety Code §§ 19955, 19959. (Doc. No. 1). Plaintiff sought an award of statutory damages, costs of suit, attorney’s fees, litigation expenses, injunctive or preventative relief, and interest at the legal rate from the date of filing the complaint. (*Id.* at 8). The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On April 22, 2022, Plaintiff filed a motion for default judgment and on January 13, 2023, the Magistrate Judge filed a Findings and Recommendations recommending that Plaintiff’s

1 motion for default judgment be granted and contained a fourteen (14) day deadline to file
2 objections. (Doc. Nos. 12, 16). The January 13, 2023 Findings and Recommendations were
3 served on Plaintiff and instructed Plaintiff to mail a copy of the findings and recommendations to
4 Defendants at their last known address and file with the court proof of service within fourteen
5 business days. (*Id.* at 11). On January 13, 2023, Plaintiff filed a certificate to demonstrate
6 compliance with the Court's January 13, 2023 Order. (Doc. No. 17). Defendants have not filed
7 any objections to the January 13, 2023 Findings and Recommendations and the time to do so has
8 expired.

9 As noted above, Plaintiff is seeking to recover under the California Unruh Act for
10 disability related discrimination. Recently, the Ninth Circuit has upheld a district court's
11 invocation of 28 U.S.C. § 1367(c)(4) to decline to exercise supplemental jurisdiction over
12 accessibility related Unruh Act claims. See Vo v. Choi, 49 F.4th 1167, 1174 (9th Cir. 2022).
13 Specifically, the additional filing and heightened pleading requirements that California has
14 imposed on high frequency litigators of accessibility related Unruh Act claims justified the
15 declination of supplemental jurisdiction.¹ See id. at 1172-74; see also Arroyo v. Rosas, 19 F.4th
16 1202, 1207, 1211-14 (describing the pleading and filing requirements for high frequency
17 litigators of construction-related accessibility claims and finding that the policy considerations
18 embodied by these requirements were "exceptional circumstances" for purposes of 28 U.S.C. §
19 1367(c)(4)). In light of *Vo*, the Court finds that it is appropriate for Plaintiff to show cause in
20 writing why this Court should continue to exercise supplemental jurisdiction over his Unruh Act
21 claim.

22 With respect to Plaintiff's California Health & Safety Code claims, the Court notes that
23 *Vo* dealt only with Unruh Act claims. However, California's heightened pleading and filing
24 requirements are not limited to accessibility related Unruh Act claims. See Arroyo, 19 F.4th at
25 1206 (explaining that California imposed heightened pleading requirements under "the Unruh Act

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27 ¹ The Court notes that Plaintiff in other cases has admitted that he is a "high frequency litigator" who would
28 otherwise be required to comply with the heightened filing and pleading requirements if he pursued an Unruh Act
claim in state court. See Gilbert v. Bonfare Markets, Inc., 2023 U.S. Dist. LEXIS 20861, *5-*6 (E.D. Cal. Feb. 7,
2023).

1 *and related statutes . . .*” (emphasis added)); Cal. Code Civ. P. 425.50(a); Cal. Civ. Code §
 2 55.52(a). The heightened pleading requirements apply to “construction-related accessibility
 3 claims.” Cal. Code Civ. P. § 425.50(a). A “construction-related accessibility claim” is defined
 4 through incorporation of Cal. Civ. Code § 55.52. See Cal. Code Civ. P. § 425.50(a). Section
 5 55.52 defines a “construction-related accessibility claim” as “any civil claim in a civil action with
 6 respect to a place of public accommodation, including, *but not limited to*, a claim brought under
 7 [Civil Code §§] 51, 54, 54.1, or 55, based wholly or in part on an alleged violation of any
 8 construction-related accessibility standard as defined in paragraph (6).” Cal. Civ. Code §
 9 55.52(a)(1) (emphasis added). In turn, a “construction-related accessibility standard” means “a
 10 provision, standard, or regulation under state or federal law requiring compliance with standards
 11 for making new construction and existing facilities accessible to people with disability, including,
 12 but not limited to, any provision, standard, or regulation set forth in [Civil Code §] 51 . . . [Cal.
 13 Health & Safety Code §] 19955.5 . . . the federal [ADA] . . .” Cal. Civ. Code § 55.52(a)(6).

14 Cal. Health & Safety Code § 19955 is meant to insure that public accommodations and
 15 facilities adhere to the accessibility standards of Cal. Gov. Code § 4450, see Cal. Health & Safety
 16 Code § 19955(a), and Cal. Gov. Code § 4450 ensures that governmental structures and facilities
 17 “shall be accessible to and usable by persons with disabilities.” Cal. Gov. Code § 4450(a).
 18 Similarly, Cal. Health & Safety Code § 19959 makes the requirements associated with § 19955
 19 applicable to structural repairs or alterations performed on certain public accommodations
 20 constructed before July 1, 1970. See Cal. Health & Safety Code § 19959. Thus, the accessibility
 21 standards found in Gov. Code § 4450(a) will apply to some public accommodations constructed
 22 before July 1, 1970, if the public accommodation performs certain repairs or alterations. See Cal.
 23 Health & Safety Code §§ 19955(a), 19959.

24 Because § 19955 and § 19959 are meant to ensure that certain facilities are accessible to
 25 those with disabilities, see Cal. Health & Safety Code §§ 19955(a), 19959, and because the
 26 standard of Health & Safety Code § 19955.5 is expressly identified as a “construction-related
 27 accessibility standard” that may form the basis of a “construction-related accessibility claim,” see
 28 Cal. Code Civ. P. § 425.50(a)(1), (6), the Court concludes that the Plaintiffs’ claims under Cal.

1 Health & Safety Code §§ 19955 and 19959 are “construction-related accessibility claims” that are
2 subject to the same pleading and filing requirements as Plaintiff’s Unruh Act claim. Therefore,
3 the Court will also order Plaintiff to show cause why the Court should exercise supplemental
4 jurisdiction over Plaintiff’s Health and Safety Code claims. See Vo, 49 F.4th at 1172-74; Arroyo,
5 19 F.4th at 1211-14.

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7 **ORDER**

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. Within fourteen (14) days of services of this order, Plaintiff shall show cause in writing
10 why this Court should continue to exercise supplemental jurisdiction over his state law
11 claims in light of *Vo* and *Arroyo*;
- 12 2. The failure to timely file a response to this order to show cause will be deemed a non-
13 opposition to the Court declining to exercise supplemental jurisdiction over Plaintiff’s
14 state law claims;
- 15 3. Following resolution of this order to show cause, the Court will make appropriate rulings
16 with respect to Plaintiff’s motion for default judgment and the related pending Findings
17 and Recommendations; and
- 18 4. Plaintiff’s motion for default judgment and the related Findings and Recommendations
19 remain pending.

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21 IT IS SO ORDERED.

22 Dated: February 27, 2023



23 SENIOR DISTRICT JUDGE
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